STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

NORTH SHORE GAS COMPANY **Proposed General Increase in Rates for Gas Service.**	: :	**Docket No. 12-0511**
THE PEOPLES GAS LIGHT AND COKE COMPANY **Proposed General Increase in Rates for Gas Service.**	: :	**Docket No. 12-0512 (Cons.)**

STAFF OF THE ILLINOIS COMMERCE COMMISSION REPLY IN SUPPORT OF ITS MOTION TO STRIKE A PORTION OF THE SURREBUTTAL TESTIMONY OF KYLE HOOPS

The Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys and pursuant to Sections 200.190 and 200.680 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.190 and 200.680, and the Administrative Law Judges' ("ALJs") Notice of Schedule on October 29, 2012, hereby replies in support of its motion to strike ("Motion") a portion of the surrebuttal testimony of Kyle Hoops (NS-PGL Ex. 44.0) filed on behalf of North Shore Gas Company ("North Shore") and the Peoples Gas Light and Coke Company ("Peoples Gas") (collectively "NS/PGL" or "the Companies"). In support of this Reply, Staff states as follows:

1. On January 25, 2013, pursuant to the procedural schedule established in this docket, NS/PGL filed the surrebuttal testimony of Kyle Hoops. On pages 9-10, Lines 208-218, Mr. Hoops was asked and answered:

> **Q. As part of a detailed analysis of all aspects of 2013 capital costs for Peoples Gas following the update to the Calumet System Upgrade project, did Peoples Gas discover an item was understated?**
>
> A. Yes. Based upon our review, it was discovered that Non-AMRP Gas Services was significantly under-estimated. Non-AMRP Gas Services includes the capital work on Peoples Gas' system that adds new services for customers outside of the AMRP projects as well as other capital replacements to existing services. Non-AMRP Gas Services was estimated at $4,359,396 for 2013. However, for 2010, 2011 and 2012, Non-AMRP Gas Services was $26.0 million, $18.5 million, and $24.5 million, respectively, for an average of $23.0 million. Therefore, Non-AMRP Gas Services will be increased by the amount of the reduction of the Calumet System Upgrade from $4,359,396 to $16,073,896.

(NS-PGL Ex. 44, pp. 9-10)

2. Mr. Hoops' testimony at Lines 208-218 should be stricken because it constitutes improper surrebuttal testimony, prejudicing Staff and other parties from adequately responding to this change. (Staff Motion, ¶3 and 5) Additionally, Lines 208-218 constitute a violation of Ill. Adm. Rule 287.30 because the update (1) is significant (2) could have been reflected in the Companies' initial filing and (3) cannot be adequately reviewed by Staff and other parties. (83 Ill. Adm. Code 287.30(b)(1)-(3); Staff Motion, ¶6)

3. On January 31, 2013, NS/PGL filed a Response to Staff's Motion. The Companies state that while preparing surrebuttal testimony, they discovered that capital costs related to Non-AMRP Gas Services had been previously underestimated for 2010, 2011, and 2012 and should have been: $26.0 million, $18.5 million, and $24.5 million, respectively. (NS/PGL Response, p. 2) Therefore, the Companies increased "the Non-

AMRP Gas Services capital costs from $4,359,396 to $16,073,896, which is conservative in light of the three previous years."[1]

4. The Companies state that Staff implied that the Companies could have and should have addressed this correction in direct or rebuttal testimony, but instead waited until the surrebuttal round to make a "significant change in testimony." (NS/PGL Response, p. 2 *citing* Staff Motion, ¶ 4) Staff assumes NS/PGL provided the information when it realized its own error, but still maintains that this underlying information existed at the initial filing stage of the proceeding, and should have been included at that point in time, but according NS/PGL was due to an oversight on their part. (NS/PGL Response, p. 2) Staff and parties should not bear the burden of the Companies' error, as the Companies suggest they should.

5. Staff agrees with the Companies that there has been "robust discovery in these proceedings." (*Id.)* This does not change the fact that Staff and Intervenors are unfairly prejudiced by the extreme untimeliness of the modification. Staff cannot issue Data Requests on this matter, and cross-examination will not adequately produce sufficiently detailed information.[2] The Companies also emphasize that they had only six business days to prepare surrebuttal after the filing of Staff/Intervenor Rebuttal. Staff is unsympathetic; the *Companies* are seeking a rate increase (and filed their tariffs at a time of their election) and all parties are subject to the 11-month limits in Section 9-201 of the Public Utilities Act. A short time period between rebuttal and surrebuttal is standard in rate cases at the Commission, and the Companies agreed to the same

[1] Staff is puzzled by NS/PGL's caveat that this approximately $12 million increase is "conservative." Do the Companies not propose an accurate increase? The Companies should provide accurate capital costs, not estimates or numbers they believe may be more palatable to the parties.

[2] Staff witness Hathhorn received the response to one Data Request attempting to quantify the effect of the change on the revenue requirement schedules, but will not have time for additional discovery.

schedule as all other parties. (*Tr.*, September 24, 2012, p. 8) Furthermore, as noted the Companies can file a rate case at any time of their choosing and may take as much time as they wish to prepare their initial filing and ensure that the correct information is included in the filing. There is no legitimate comparison here – Staff and the Intervenors had no notice that the Companies would make such a significant change to the capital costs related to Non-AMRP Gas Services in their surrebuttal testimony.

6. Additionally, the Companies attempt to compare Mr. Hoops' surrebuttal modification to Staff Witness Kahle's Supplemental Rebuttal Testimony. (NS/PGL Response, pp. 3-4) Mr. Kahle is simply calculating an average of the last three historical years and is using the Companies' own numbers that the Companies provided Staff in response to discovery, which were not available until after December 31, 2012. Mr. Kahle's argument and theories were first presented in his Direct Testimony, so the Companies are not prejudiced with new information, as Staff and Intervenors are in this case. Mr. Seagle has never seen support for these rate base additions in any prior rounds of testimony filed by the Companies.

7. Finally, NS/PGL states that Mr. Hoops' testimony at Lines 208-218 does not violate Section 287.30 of the Commission's Administrative Rules. (*Id.*, p. 4) The Companies state that the language is "unclear", but NS/PGL's understanding is that this Section prohibits across–the-board updates to a utility's revenue requirement during a future test year rate case. (*Id.*) Staff wholly disagrees that Section 287.30 is unclear or ambiguous. As stated in Staff's Motion, Section 287.30 requires:

> **Section 287.30 Updates to Future Test Year Data**
> a) During the suspension period, the assigned Administrative Law Judge may require or allow the utility to update its schedules and workpapers, if a utility has proposed a future test year, according to the schedule

established in the proceeding when evidence has been introduced that a significant and material change affecting the revenue requirement as defined in subsection (c) of this Section has occurred. In establishing this schedule, the Administrative Law Judge shall consider the timing and scope of the updated filing. A utility shall not be allowed or required to submit more than one updated filing, or to submit an updated filing during the final 150 days of the resuspension period. When data are updated, the utility shall also provide updated information for any affected schedules and work papers originally submitted as a requirement of 83 Ill. Adm. Code 285.

b) **A determination to require or allow the submission of an update shall include**, but not be limited to, the consideration of:

1) Whether the changes significantly and materially affect the revenue requirement;

2) Whether the changes could have been reflected in the initial tariff filing; and

3) Whether the Illinois Commerce Commission staff and other participants will have an adequate opportunity to review the updated information.

c) Examples of "significant and material" changes would include changes since the original filing of tariffs to factors including, but not limited to:

1) Contractual obligations;

2) Revenue requirements;

3) Additions or losses of customers served; and

4) Governmental requirements or levies, such as tax rates or environmental requirements.

d) Whenever the utility updates projected data in its selected test year, it shall provide a reconciliation of original and updated data and identify and support the changes in its testimony and exhibits.

e) Nothing in this Section shall be construed as a limitation on updates to the rate of return on rate base during the rebuttal phase of the rate proceeding.

(83 Ill. Adm. Code 287.30, emphasis added)

The changes the Companies raise for the first time in surrebuttal testimony could have been reflected in the initial tariff filing and Staff and the other participants would have had adequate opportunity to review the updated information. The plain language of Section 287.37 is clear and states that if the information could have been reflected in the utility's *initial filing*, which it was not, the update should not be allowed. "A primary rule of statutory construction is that a court must give the language of the statute its

plain and ordinary meaning." (*Village of Bolingbrook v. Citizens Utility Co.*, 267 Ill. App.3d 358, 359 (Ill. App.1994) (citation omitted)) Staff does not believe that Section 287.30 is: "intended to or can override the Utilities' right to provide proper surrebuttal evidence;" (NS/PGL Response, p. 5) rather, the intent of the Rule is to allow sufficient time for parties to review utilities' costs such that parties can make an informed decision as to whether NS/PGL's capital costs are prudent and reasonable.

8. NS/PGL argues that Section 287.30 does not override their right to provide proper surrebuttal and close the evidence and cite to Section 200.570. (*Id.)* However, the Commission recognized that "Section 200.570 should not be interpreted to allow a utility to continually introduce new evidence to which no party has a chance to respond. Generally, it is understood that when a utility is closing its case it is responding to the last statements of the other parties." (*In re Revision of 83 Ill. Adm. Code 285*, 2003 WL 21108559, Second Notice Order, March 26, 2003)

WHEREFORE, for the foregoing reasons, Staff respectfully requests that the Commission strike pages 9-10, Lines 208-218 of Companies witness Kyle Hoops' surrebuttal testimony and direct the Companies to provide revised surrebuttal schedules[3] which reflect Lines 208-218 of Mr. Hoops' surrebuttal testimony being stricken.

Respectfully submitted,

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[3] Staff believes that the schedules which would need to be revised are those attached to Companies' witnesses Hengtgen's and Moy's surrebuttal testimony.

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